

Court Facilities Contracting Policies and Procedures

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ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

Office of Court Construction and Management

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I. POLICY

The Administrative Office of the Courts (AOC) will contract with qualified firms and individuals under competitive terms, in the planning, acquisition, design, construction, operation, and maintenance, to provide all Californians the best value, initially and over the long term operational life, of state court facilities.

II. BACKGROUND

The *Trial Court Facilities Act of 2002* (The Act) established that the Administrative Office of the Courts (AOC) shall manage all court facilities. It requires the Judicial Council to approve policies and procedures developed by the AOC for contracting. The review process for these policies and procedures includes consultation with the Department of Finance.

This document satisfies the requirements defined in the *California Government Code*, Section 70374(b)(2), which states the following:

- (2) ...*Acquisition and construction of facilities are not subject to the provisions of the Public Contract Code, but shall be subject to facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the Department of Finance.*

The Act also invests the authority and responsibility for all court facilities in the Judicial Council. The Government Code states that the Judicial Council will “exercise the full range of policy making authority” over appellate court facilities (Sections 69204 (b) and (c)) and trial court facilities (Sections 70391(b) and (e)), “including, but not limited to, planning, construction, acquisition, and operation, to the extent not expressly otherwise limited by law.” The Judicial Council will also “establish policies, procedures, and guidelines for ensuring that the [appellate and judicial] courts have adequate and sufficient facilities, including, but not limited to, facilities planning, acquisition, design, construction, operation, and maintenance.” The Judicial Council established the Office of Court Construction and Management (OCCM) within the AOC to administer these policies and procedures.

This document sets forth the Court Facilities Contracting Policies and Procedures necessary for the AOC to best serve the courts and the public in compliance with the Act, and to achieve the following objectives:

1. For firms and individuals that provide products and services, this document defines the selection processes to be used by the AOC, and the nature of the contracts used when providing acquisition or construction products or services to the AOC and the Judicial Council.
2. For the AOC, this document establishes selection and contracting parameters authorized by *California Government Code* Section 70374(b)(2). The procedures described here establish qualifications-based selections, and acknowledge that contracts must provide for

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contemporary delivery methods and best practices related to facilities planning, acquisition, design, construction, operations, and maintenance of court facilities.

3. For the public, this policy sets forth a fiscally responsible and accountable selection and contracting procedure to assure that the best value is received by the courts for the benefit of all Californians.

III. DEFINITIONS

Best Value means that a product or a service has been selected for superior performance in one or more of the following factors: quality; durability; aesthetics; reliability; life-cycle cost; initial cost; energy efficiency; past performance, similar experience, the composition and stability of the Proposer's team; and the capacity of the Proposer to predictably meet quality, budget and schedule requirements.

Blanket Purchase Orders create an arrangement under which the AOC contracts with a vendor to provide an undetermined amount of products and ancillary services for a specified period of time and up to a maximum dollar amount.

California Multiple Award Schedule (CMAS) contracts are awarded and administered by the State of California, Department of General Services, Procurement Division. CMAS contracts are based on products, services and prices from existing competitively assessed multiple award contracts. The providers are primarily, but not exclusively, from the federal General Services Administration (GSA) multiple award schedule program. California contract terms and conditions, procurement codes and policies are applied to these products, services and prices, creating totally independent contracts. This type of contract is utilized by California state and local government agencies under authority delegated by the Department of General Services. These agencies make best value purchasing decisions according to their own requirements, such as price, warranty, and supplier performance.

Construction Manager at Risk (CM at Risk) means a firm or individual that is selected based on qualifications and cost before the design stage is complete. CM services include, but are not limited to, early coordination during the design phase, engineering, and constructability reviews. The CM-at-Risk delivery method entails a commitment by the CM to deliver the project within a Guaranteed Maximum Price (GMP). The CM acts as consultant to the AOC in the design phase, but as the equivalent of a general contractor during the construction phase, and is responsible for the selection, scheduling and sequencing of trade contractors.

Contractor is a person, business or corporation which provides products or services to another entity under terms specified in a contract.

Design-Build Contracts establish a single point of responsibility for design and construction in one firm. The most common approach is for a contractor to serve as the lead firm and hire an architect/engineering firm as a sub consultant to perform all design services.

Indefinite Delivery/Indefinite Quantity (ID/IQ) Contracts are contracts for products or services. The scope and time are unknown at the time of contract execution. Providers may be

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given various assignments based on the location and nature of the products or services and the qualifications and resources of the providers.

Job Order Contracts provide for products or services supplied at predefined composite rates, as opposed to time and materials.

Master Agreement means an agreement that may be used to facilitate contracting for products or services to be provided by suppliers with whom there is a reasonable expectation of continuing intermittent procurements of the same or similar products or services.

Proposer is a person, business or corporation which has responded to an RFQ/RFP, but has not entered into a contract.

Public Private Partnership is a cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined criteria to serve public needs through the appropriate allocation of resources, risks and rewards.

Request for Proposal (RFP) is a document used to solicit bids for the provision of products and services. The multiple responses received are compared to each other and judged against predetermined and stated criteria for final selection of a proposal which may be accepted.

Request for Qualifications (RFQ) is a document used to solicit statements of qualifications from service providers. Responses are compared to each other and judged against a predetermined and stated criteria for selection as a qualified supplier. RFQs may be used for individual projects, or for inclusion on Short Lists to expedite future project awards.

Short List is a group of firms or individuals considered to meet or exceed the selection criteria for a specific RFQ or RFP. Contractors qualify for the Short List through evaluations of their statements of qualifications, proposals, and/or interviews.

IV. PROCESS

A. Types of Service Providers

This section lists the types of service providers that may be required by the AOC in the fulfillment of the planning, acquisition, design, construction, operations, and maintenance of court facilities. Once selected, these service providers enter into a contract appropriate to the scope of work and the needs of the AOC. Types of service providers may include, but are not limited to:

1. Planning and Design Services

- a. Acoustical Consultants
- b. Architects
- c. Audio Visual Consultants
- d. Civil Engineers
- e. Code Compliance Plan Review Services
- f. Computer Aided Drafting and Design (CADD) Services

- g. Cost Estimating Services
- h. Electrical Engineers
- i. Energy Conservation Services
- j. Engineering Geologists
- k. Environmental Engineers
- l. Financial Services for capital planning and development
- m. Fire Protection Engineers
- n. Geotechnical Engineers
- o. Industrial Hygienists
- p. Information Systems Consultants
- q. Interior Designers
- r. Landscape Architects
- s. Land Surveyors
- t. Mechanical Engineers
- u. Parking Consultants
- v. Planning Services
- w. Program Services
- x. Registered Professional Engineers
- y. Safety Consultants
- z. Security Consultants
- aa. Structural Engineers

2. Construction Services

- a. Construction Manager at Risk Services
- b. Design-Build Services
- c. General Engineering Contractor (California 'A' Licensed) Services
- d. General Building Contractor (California 'B' Licensed) Services
- e. Specialty and Limited Specialty Contractor (California 'C' Licensed) Services

3. Construction Management Services

- a. Program Management Services
- b. Project Management Services
- c. Construction Management Services

4. Specialty Construction Consultant Services

- a. Fire Alarm Consultant Services
- b. Fire Sprinkler Consultant Services
- c. Roofing Consultant Services
- d. Waterproofing Consultant Services
- e. Elevator/Escalator Services

5. Construction Quality Assurance Services

- a. Inspector of Record Services
- b. Materials Testing Laboratories
- c. Special Inspection Services

6. Operations and Maintenance Services

- a. Building Management and Maintenance Services
- b. Property Inspection and Assessment Services

7. Environmental Health and Site Safety Services

- a. California Environmental Quality Act (CEQA) Services
- b. Environmental Assessment (Phase I, II and III) Services
- c. Hazardous Waste and Hazardous Materials Management Services
- d. Industrial Hygiene and Safety Services
- e. Remediation Services

8. Real Estate and Acquisition Services

- a. Appraisal Services
- b. Brokerage Services
- c. Build-to-Suit Leasing Services
- d. Business Consulting Services
- e. Financial Consulting Services
- f. Land Use Services
- g. Lease Audit Services
- h. Real Estate Developer Services
- i. Real Estate Services
- j. Title Services

9. Public Private Partnerships

- a. Design-Build
- b. Design-Build-Operate-Maintain
- c. Design-Build-Finance-Operate-Maintain
- d. Land Acquisition-Design-Build-Finance-Move-Operate-Maintain

B. Types of Products

This section lists the types of products that may be required by the AOC in the fulfillment of the planning, acquisition, design, construction, operations, and maintenance of court facilities. Once selected, product providers will enter into a contract appropriate to the scope of work and the needs of the AOC. The AOC may provide products to be installed by the prime contractor, a separate contractor or the AOC's own staff. Types of products may include, but are not limited to:

1. Fixtures

- a. High Density Files
- b. Shelving
- c. Storage Racks

2. Furniture

- a. Exterior Furniture
- b. Freestanding Furniture
- c. Modular Furniture

3. Equipment

- a. ATMs and Information Kiosks
- b. Audio Visual Equipment
- c. Health and Safety Equipment
- d. Information Technology Infrastructure
- e. Security Equipment
- f. Teleconference Equipment
- g. Telephone Equipment

4. Other

- a. Artwork
- b. Interior Plants

C. Types of Contracts

This section lists the types of contracts that may be required by the AOC in the fulfillment of the planning, acquisition, design, construction, operations, and maintenance of court facilities. It is the intent of the AOC to keep pace with the changing product, service and delivery environment. As the industry develops new concepts, the AOC will develop new types of contracts. Types of contracts may include, but are not limited to:

1. Contracts for Construction

- a. Bid-Build Contracts
- b. Construction Manager at Risk Contracts (CM @ Risk)
- c. Design-Build Contracts
- d. Design-Build-Operate-Maintain Contracts
- e. Design-Build-Finance-Operate-Maintain Contracts
- f. ID/IQ Construction Contracts
- g. Job Order Construction Contracts
- h. Land Acquisition-Design-Build-Finance-Move-Operate-Maintain Contracts
- i. Lease Purchase Construction Contracts

2. Contracts for Services

- a. Architectural and/or Engineering Service Contracts
- b. Construction Management Agency Contracts
- c. Construction Quality Assurance Service Contracts
- d. Consultant Service Contracts
- e. Environmental Health and Safety Services Contracts
- f. ID/IQ Service Contracts
- g. Job Order Service Contracts
- h. Moving and Relocation Service Contracts
- i. Operations and Maintenance Service Contracts
- j. Parking Service Contracts
- k. Performance Based - Cost Reimbursable Contracts
- l. Real Estate and Acquisition Service Contracts
- m. Specialty Construction Consultant Service Contracts
- n. Storage and Warehousing Services Contracts
- o. Utilities Service Contracts
- p. Waste Management Service Contracts

3. Contracts for Products

- a. Project Specific Contracts
- b. Blanket Purchase Orders
- c. Master Agreements

D. Selection Procedure

1. General

- a. This section outlines the selection procedure used by the AOC for the planning, acquisition, design, construction, operations, and maintenance of court facilities. The purpose of these procedures is to contract with the most qualified firms or individuals that have the demonstrated capacity to reliably deliver contractual obligations, in order to secure the best value, through the evaluation of the products and skills of the Proposers.
- b. This general selection procedure is used to select candidates for a variety of needs covering a variety of contract types. This procedure may also be used to qualify firms in advance of the actual need for their products or services.
- c. An AOC/OCCM Assistant Division Director may approve alternates to these procedures when products or services are of limited scope.
- d. Other selection methods may be necessary in special situations, including:
 - i. Emergency Selection Procedures (see Section 10)
 - ii. Sole Source Contracts (see Section 11)
 - iii. California Multiple Award Schedule (CMAS) (see Definitions)

- e. Applicants interested in providing services to the AOC must follow the written instructions as published in the Request for Qualifications (RFQ) or Request for Proposals (RFP) to establish their qualifications and/or the competitiveness of their proposal. The specific RFQ/ RFP instructions take precedence over this general procedure.
- f. Cost or price may be one qualifying factor or, as in the traditional design-bid-build model, it may be the primary qualifying factor among properly licensed and qualified bidders.
- g. The following describes the RFQ/RFP solicitation, selection and award procedure.

2. Announcement

- a. The AOC publishes RFQ/RFPs seeking submittals from firms or individuals interested in providing products or services to the AOC. Announcements will address the following: the purpose of the RFP/RFQ; scope of service; how to respond; description of the evaluation and selection process; special requirements; administrative rules governing the process; and disabled veteran business enterprise (DVBE) participation goals. Sample contract terms will be included with the RFP/RFQ application materials provided to interested parties. A reasonable length of time, no less than two weeks, will be given between the published notification for an RFQ/RFP and the closing date for submissions. Announcements will be placed on the Court information website (<http://www.courtinfo.ca.gov/>), and other publications which may include but are not limited to the California State Contracts Register (CSCR) website (<http://www.cscr.dgs.ca.gov/cscr>), a general circulation publication in the geographic area in which the work is located, a trade paper, or journals targeting Disabled Veteran Business Enterprises (DVBES). Proposers may also be sought by direct solicitation.
- b. Announcements and notifications for RFPs, RFQs, Addenda, Short List Announcements, Related Documents, Notices of Intent to Award, and Awards will be made through the AOC web site. Where no appropriate Short List exists and with the approval of the AOC/OCCM Assistant Division Director, contracts for products or services of limited scope may use an informal process using email or telefax to a limited number of providers for announcements and notifications in lieu of the AOC web site. Protests are subject to the administrative rules governing the individual RFQ/RFP.

3. Submittals

Interested Proposers must submit their Statements of Qualifications (for RFQs) or their Proposals (for RFP's) using the federal General Services Administration Standard Form 330 or as prescribed in the RFQ/RFP by the published closing date and time. Submittals will be received and processed through the AOC Business Services unit

- a. The AOC will review all submittals for completeness, and evaluate the complete submittals based on established selection criteria as stated in the RFQ/RFP.
- b. The AOC may review Performance Evaluations from previous AOC contracts with each Proposer.
- c. Selection criteria may include, but not be limited to: the scope of products and services offered in relation to the forecasted project requirements; the scope of similar

- past projects completed by the Proposer; the history of the product or service offered; the costs associated with the products or services offered; the project type or size; the service type or size; the experience of the Proposer, its principals, or its combined team; the special expertise of members of the Proposer's team, if any; the continuity of the team; the Proposer's previous record for meeting budget and schedule; the availability of resources; the quality assurances; the financial strength and stability of the firm relative to the size and risk of the contract and the surety bond if applicable, the Proposer's DVBE status; and the Proposer's geographic location.
- d. The AOC may review the compensation portion or product cost portion of a proposal, if one exists, as the sole criteria (as in the traditional low-bid model) or as a weighted criterion, or it may request that the compensation portion of the proposal be placed in a separate envelope for consideration independently or at a later date.
 - e. The AOC will contact existing clients and users of the products, projects or services referenced in the submittal. It may also contact any previous recipients of the products or services provided by the Proposer.
 - f. Bid bonds in an amount stated in the solicitation notice shall be required on 'lump sum' and 'guaranteed maximum price' projects.

4. Creating a Short List

The AOC may create a Short List of all qualified Proposers, and then prioritize this Short List, ranking the Proposers by qualification in order of first, second, third and so on, for interviewing and negotiating purposes.

- a. Not all submittals may qualify for the Short List.
- b. If no submittals are considered to be adequately qualified, then the AOC may terminate the selection process.
- c. A Short List may contain only one firm.
- d. Additional interviews may be required to complete the Short List or ranking process.
- e. Short Lists may be established for general products or services, the scope of which may be defined at a later date before individual contracts are established.

5. Using a Short List

In cases where a specific scope of service or product delivery is established after a Short List is created, the AOC may contact pre-qualified Proposers on the Short List and send a project-specific RFP to those who request it. Interested applicants from the Short List must submit their Proposals by the published closing date and time.

- a. The AOC will review all submittals for completeness, and will evaluate the complete submittals as described above under 'Submittals'.
- b. Based on responses to a project-specific RFP, the AOC may alter the Short List. The conditions listed under 'Creating a Short List' apply.

6. Interviewing

The AOC may utilize an interview process to determine which Proposer provides the best value. The AOC reserves the right to negotiate after submittals are evaluated, and may award a contract without creating a Short List or interviewing. Whether or not interviews

will be required will normally be indicated in the RFQ/RFP. When the selection criteria are completely fixed and specified in the RFQ/RFP, the interview may be omitted.

- a. The AOC may interview as many qualified applicants as is reasonably necessary to determine the best applicant(s) for further consideration.
- b. An interview is not to be construed as an intention by the AOC to award a contract or enter into negotiations for a contract.
- c. If these interviews fail to identify an applicant capable of providing an acceptable value, the AOC may terminate the solicitation.
- d. If the AOC is able to identify an acceptable candidate(s), the AOC may proceed into the negotiating phase with that Proposer(s) without obligation to interview further Proposers.

7. Negotiating

The AOC will utilize a process of negotiation to finalize contracts. For qualifications based selection, where price was not the determining factor, mutually acceptable terms and price will be negotiated. For “lump sum” and other fixed price bids, only the non-price terms are subject to negotiation.

- a. The AOC will negotiate for acceptable contract terms with the Proposer.
- b. No commitment to enter into a contract is implied by these negotiations. The AOC may terminate negotiations when good faith efforts have been exhausted and commence negotiations with the next ranked Proposer.
- c. If the interviews and negotiations fail to reach a satisfactory outcome, the AOC may terminate the selection process.

8. Withdrawal of Submittal

Applicants may request to have their proposals withdrawn at any time prior to the deadline for submission by notifying the AOC in writing. The withdrawal request must be signed by the Proposer. Withdrawn submittals will be kept sealed and retained by the AOC until the resolution of any protests. The Proposer may thereafter submit a new or modified proposal, provided that it is received by the AOC by the submission deadline listed in the RFQ/RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the deadline for submission.

9. Protests

- a. Any actual or prospective contractor may protest the procurement or award of a contract.
- b. Protests during the solicitation phase must be received by the submission deadline.
- c. Protests of the Short List must be received no later than five (5) business days after the notification of the Short List.
- d. Protests of the award must be received no later than five (5) business days after the date of notification on the court website of the Intent to Award.
- e. All protests must be in writing, must identify the bid number, bid opening date, and bid description. For verbal bid/quotations, the Proposer must identify the materials or services requested. The protest must provide a brief summary of the reasons for

- protesting the procurement or award of the contract. The protest shall be submitted to the Contracting Officer or designee.
- f. The AOC/OCCM Project Manager will initially address any protest. If the matter cannot be informally resolved, the Project Manager will serve notification to the protester that a full and complete formal statement detailing the nature of the problem must be submitted for review. The Contracting Officer or designee must receive the formal statement from the protester within five (5) business days following notification from the Project Manager. The notification will be deemed served five days after the date of mailing unless the RFQ/RFP specifies, or the protester and the Project Manager agree to, an alternate form of notice such as email or telefax, in which case notification will be deemed served on the date the email or telefax was transmitted. Failure to file the formal statement will mean that the protesting party relinquishes all rights to further protest.
 - g. Once the formal statement of protest is received, the matter shall be escalated to the AOC/OCCM Assistant Division Director for final decision. The Assistant Division Director, in consultation with the AOC Business Services Manager, has final authority to resolve protests arising from the solicitation, selection or award of a contract. The decision shall be communicated in writing and shall be mailed or otherwise furnished to the protester in such a manner as to ensure receipt.
 - h. The AOC reserves the right to continue with award of contract while any protest is unresolved if the AOC determines it is the public's best interest to proceed.

10. Emergency Selection Procedures

In the event of an emergency condition, the AOC's priorities are to protect public safety and to return the Court to safe operations. An emergency condition exists when, as described in the *Prioritization Methodology for Modifications to Court Facilities* a "Priority 1 – Immediately or Potentially Critical" condition exists. The AOC will respond to an emergency condition as follows:

- a. The AOC will use existing contracts to immediately address an emergency condition.
- b. If there are no existing contracts, the AOC will consider the requirements of the project and contact for immediate interviews and selection: firms appropriate to the emergency that are currently on an active short list; if none exist, the AOC will contact firms appropriate to the emergency.
- c. The AOC will expedite the Contract Award Procedure.

An emergency condition may justify a Sole Source Contract.

11. Sole Source Contracts

- a. A Sole Source Contract is a contract awarded without an RFQ or an RFP or a traditional bidding process. A proposal for a Sole Source Contract is solicited from a single source and is done so only under exceptional conditions. Sole source contracts may only be used when selection by other methods is deemed infeasible. Sole Source Contracts must be approved by the AOC/OCCM Assistant Division Director and may only be awarded for one or more of the following reasons:
 - i. The required product or service is available from only one source (e.g., maintenance and/or upgrades of existing proprietary software or hardware in

- circumstances where a competitive bid is not feasible, Original Equipment Manufacturer, etc.).
- ii. An emergency does not permit the time needed for a competitive procurement.
 - iii. After solicitation of a number of sources, the competition is determined to be inadequate.
 - iv. The contract is for legal services, including expert witnesses.
 - v. The Sole Source Contract is needed to avoid financial loss to the AOC (e.g., interruption of essential operations, damage to AOC resources, etc.).
 - vi. The contract is for consulting services in an amount less than \$5,000 when pricing is reasonable.
 - vii. Exercise of an option to extend the term of a contract for a reasonable period (considering the nature of the contract) when the terms of the original contract provided for extension and the option was evaluated during the original bid process.
 - viii. Competitively bid contracts which did not include an option to extend may be extended on one occasion for a maximum one-year period and not to exceed 30% of the contract value.
- b. The Justification of the rationale for Sole Source Contract must pre-date the actual procurement, and must be documented by the AOC thoroughly and carefully. Factors to be considered in justifying a sole source contract include:
- i. The effort made to solicit competitive bids or proposals, if any.
 - ii. The reasonableness of the cost of the contract; cost information must contain sufficient detail to support and justify the cost of the contract.
 - iii. The cost for similar services with a comparison of the differences that should be noted and explained.
 - iv. Special factors affecting the cost under the contract.
 - v. An explanation of why the AOC believes the cost is appropriate.

E. Contract Award Procedure

1. Award of the Contract

- a. Public posting of the Notice of Intent to Award Contract shall be made on the AOC website.
- b. Once agreement on the terms of the Contract is reached, including compensation, an Award of Contract letter may be sent to the selected proposer.
- c. Following preparation and AOC review of the Contract, the Contract will be forwarded to the selected proposer for signature.
- d. All required documentation, such as certificates of insurance or bonds must accompany the signed Contract.
- e. The AOC will then verify the documentation, sign the Contract and forward a fully executed Contract to the contractor.

2. Notice to Proceed

After the Contract is fully executed, the AOC will issue a Notice to Proceed (NTP). The NTP notifies the contractor to proceed with the work.

3. Term of Short Lists

A Short List of qualified candidates may be active for a period of up to three years. During the active term of a Short List, the AOC may ask for proposals, interview or negotiate with those on that Short List. Firms remain on an active Short List until the list expires, the vendor requests to be removed in writing, the vendor loses its legal capacity to deliver the services, or the vendor is removed for cause by the AOC through a written notification.

4. Performance Evaluations

The AOC will prepare an annual performance evaluation for each provider of products and/or services. Below average rankings may be used by the AOC as the basis for a probationary warning, non-consideration of current or future submittals, or removal from currently active Short Lists. This non-consideration, if imposed, shall be effective until the end of the following qualification cycle, after which it will expire unless specifically renewed by the AOC. Affected providers will be given written notification of non-consideration. An affected provider may appeal such a decision in writing to the respective Assistant Division Director of the AOC/OCCM. The decision by the Assistant Division Director shall be considered final.